

REMARKS

The Office Action of October 16, 2003 has been fully considered. In view of the above amendments and the following remarks, reconsideration of the application is respectfully requested.

In the Office Action, the Examiner rejected claims 1-3, 6, 8-9, 26, 28-29 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In response, these claims have been amended to address the Examiner's specific concerns. In view of these amendments, withdrawal of this rejection is respectfully requested.

Additionally, the Examiner rejected claims 1, 3-5, 7-9 under 35 U.S.C. §102(b) as being anticipated by Merad, et al. (1992); claims 1-27 under 35 U.S.C. §103(a) as being obvious and unpatentable over Merad, et al. (1992) in view of Adler (U.S. Patent No. 4,476,224); and, claims 28-35 under 35 U.S.C. §103(a) as being obvious and unpatentable over Merad, et al. (1992) in view of Adler (U.S. Patent No. 4,476,224). Evidently, the Examiner is of the opinion that the data set forth in the 1992 French article to Merad, et al. supports the conclusion that sodium azide can be utilized for the selective growth of anaerobe microbes contained in a mixed sample containing aerobes, anaerobes and facultative microbes. However, that is incorrect. As noted on page 165, table 2, of the Merad, et al. article, the use of 0.1% sodium azide in the medium precluded the growth (i.e., "Absence de culture") of many anaerobic microbes (i.e., *Bacteriodes fragilis*, *Bacteriodes asaccharolyticus*, *Bacteriodes vulgatus*, etc.). Additionally, the use of 0.1% sodium azide in the medium inoculated with the same anaerobe and with the facultative microbe, *Proteus*, produced bad or lesser results (i.e., "mauvais resultat"). Consequently, if anything, the data only shows the enhanced growth of the facultative microbe and not the anaerobic microbe. This is in opposite of the present invention wherein selective enhancement of the growth of the anaerobes (and not facultative microbes) is desired in a mixed sample that contains aerobic, anaerobic and facultative microorganisms.

Furthermore, the Examiner rejected claims 1-2, 4-5 and 9 under 35 U.S.C. §102(b) as being anticipated by Jones, et al. (1984). Evidently, the Examiner is of the view that, in Jones, the anaerobic growth of facultative anaerobes is totally inhibited by 1 mM azide. However, this is incorrect. As noted throughout the Jones, et al. article,

the facultative thermophile, *Bacillus coagulans*, can be readily distinguished from other bacilli growing under certain conditions by its tolerance to sodium azide. Furthermore, the data shows some growth of *Bacillus coagulans* even at lower temperatures (see Figure 3). In no way does this article disclose or suggest that anaerobe microbes would also exhibit tolerance to azides and/or that the use of azides would result in the selective growth of anaerobic microbes contained in a mixed sample also containing facultative microbes. Hence, withdrawal of this rejection is requested.

Furthermore, the Examiner rejected claims 10-12, 15-17, 20 and 22 under 35 U.S.C. §102(b) as being directly anticipated by Blondin, et al. (U.S. Patent No. 4,808,517). However, Blondin concerns assay methods for testing of the presence of toxic substances in environmental samples. It has nothing to do with a specially designed medium for selectively enhancing the growth of anaerobic microorganisms contained in a mixed sample. The medium contains an inhibitor of the electric transport system, such as a salt of azide, which is present in amounts sufficient to inhibit the growth of facultative microorganisms under anaerobic conditions while not inhibiting the growth of the anaerobic microorganisms. Accordingly, Blondin is clearly distinguishable from the present invention.

Lastly, the Examiner rejected claim 27 under 35 U.S.C. §102(b) as being directly anticipated by Tillonen, et al. (1998). Please note, however, that Tillonen, et al. describes the role of catalase in *in-vitro* acetaldehyde formulations by human colonic contents. While it discloses some type of a medium composition, it has nothing to do with the present invention. Consequently, withdrawal of this rejection is also requested.


In view of the above amendments and comments, Applicants submit the present application is in condition for allowance. Withdrawal of the rejections and issuance of a Notice of Allowance is requested.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to call Richard M. Klein at telephone number 216-861-5582, Cleveland, Ohio.

It is believed that no fee is due in conjunction with this response. If, however it is determined that fees are due, authorization is hereby given for deduction of those fees from Deposit Account No. 06-0308.

Respectfully submitted,

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